

ORDINANCE NUMBER O- 21640 (NEW SERIES)

DATE OF FINAL PASSAGE MAY 01 2023

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO APPROVING THE REAL PROPERTY PURCHASE AND SALE AGREEMENT AND THE REIMBURSEMENT AND PARK DEVELOPMENT AGREEMENT FOR THE NORTH CENTRAL SQUARE PARK SITE IN THE DOWNTOWN COMMUNITY PLANNING AREA, AUTHORIZING THE EXPENDITURE OF FUNDS FOR CERTAIN PARK ACQUISITION AND DEVELOPMENT COSTS, AND APPROVING RELATED ACTIONS.

WHEREAS, Bosa California LLC, a California limited liability company (Bosa), owns certain real property in the Downtown Community Planning Area bordered by B Street on the north, C Street on the south, Eighth Avenue on the west, and Ninth Avenue on the east; and

WHEREAS, Bosa intends to construct a private development project on the northerly half of this downtown property (Private Development Site) and a public park on the southerly half of this downtown property (Park Site); and

WHEREAS, the public park to be constructed on the Park Site is designated as Park Project No. P-8 in the Downtown Public Facilities Financing Plan and is known as the North Central Square Park (Park); and

WHEREAS, the City of San Diego (City) and Bosa have negotiated certain proposed agreements related to the Park Site, including a proposed Real Property Purchase and Sale Agreement (Purchase Agreement) and a proposed Reimbursement and Park Development Agreement (Reimbursement Agreement); and

WHEREAS, copies of the Purchase Agreement and the Reimbursement Agreement are attached to the staff report accompanying this Ordinance, and the Reimbursement Agreement is included as Exhibit C to the Purchase Agreement; and

WHEREAS, the Reimbursement Agreement envisions that the City's Parks and Recreation Board (Park Board) will consider approval of a General Development Plan (GDP) for development of the Park; and

WHEREAS, if the Park Board approves the GDP for the Park, the Reimbursement Agreement requires Bosa to design and construct the Park based on plans and specifications to be prepared by Bosa in accordance with the GDP and approved by the City's Development Services Department; and

WHEREAS, the Reimbursement Agreement requires the City to reimburse Bosa, using development impact fees (DIF) on deferred fee project payments deposited in Fund 400122, for eligible Park design and construction costs up to a total of \$8,996,800 plus accrued interest; and

WHEREAS, the Reimbursement Agreement will remain in effect until the City makes the final reimbursement payment to Bosa, or one year after a specified warranty bond terminates, whichever is later, but not to exceed 15 years; and

WHEREAS, the Purchase Agreement envisions that, if certain specified conditions are met (including the City's approval of its physical inspection of the completed Park), the City will acquire the Park Site from Bosa for the purchase price of \$13,827,000; and

WHEREAS, if the closing occurs under the Purchase Agreement, the City will acquire fee title ownership of the Park Site by a recorded grant deed; and

WHEREAS, the form of grant deed (Exhibit 2 to the Purchase Agreement) includes a restrictive covenant for the benefit of the Private Development Site, by which the City will agree not to construct or maintain any above-ground roofed building or covered structure over, upon, or across the northerly 20 feet of the Park Site; and

WHEREAS, the Purchase Agreement states that the City's payment of the purchase price for the Park Site will not be in the form of cash, but instead in the form of DIF credits in the total amount of \$13,827,000 (DIF Credits), available after the closing of the sale transaction, allowing Bosa or its affiliated entities to apply the DIF Credits against DIF imposed by the City on specified future development projects; and

WHEREAS, the availability of the DIF Credits is conditioned on and subject to the City Council's separate adoption of a "DIF Credit Ordinance," or an "Alternative Ordinance" deemed acceptable to Bosa, as defined and described in Section 3 of the Purchase Agreement; and

WHEREAS, the Park Site consists of approximately 23,045 square feet of land; and

WHEREAS, the City retained a qualified appraiser, Jones, Roach & Caringella, Inc., who prepared an appraisal (Appraisal) estimating the market value of the unimproved park site to be \$600 per square foot as of a specified date of value (November 1, 2020), yielding an estimated total land value of \$13,827,000; and

WHEREAS, consistent with Council Policy 700-32, the City and Bosa negotiated the purchase price of \$13,827,000 based on the estimated land value in the Appraisal; and

WHEREAS, San Diego Charter section 99 (Section 99) generally provides that no contract, agreement, or obligation creating City indebtedness and extending for a period of more than five years may be authorized except by an ordinance adopted by a two-thirds majority of the City Council; and

WHEREAS, both the Purchase Agreement and the Reimbursement Agreement are subject to the ordinance requirement in Section 99 because they may be in effect for longer than five years in accordance with their respective terms; and

WHEREAS, the Office of the City Attorney has drafted this Ordinance based on the

information provided by City staff (including information provided by affected third parties and verified by City staff), with the understanding that this information is complete, true, and accurate; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. The Council approves the Purchase Agreement and the City's acquisition of the Park Site in accordance with the Purchase Agreement.

Section 2. The Mayor or designee is authorized to sign the Purchase Agreement, a copy of which, when fully signed, shall be placed on file in the Office of the City Clerk as Document No. OO- 21640 - 1.

Section 3. The Council approves the Reimbursement Agreement.

Section 4. The Mayor or designee is authorized to sign the Reimbursement Agreement, a copy of which, when fully signed, shall be placed on file in the Office of the City Clerk as Document No. OO- 21640 - 2.

Section 5. The Mayor or designee is authorized to sign all additional documents, and take all additional actions, necessary to implement the terms and conditions of the Purchase Agreement and the Reimbursement Agreement.

Section 6. The City's Chief Financial Officer is authorized to appropriate and expend an amount not to exceed \$10,000 from Fund 400122, Downtown DIF, to allow the City's payment of all transaction costs for acquisition of the Park Site, including escrow and title costs and the City's payment of independent consideration under Section 4 of the Purchase Agreement, contingent on certification by the Chief Financial Officer that funds necessary for expenditure are or will be on deposit with the City Treasurer.

Section 7. The City's Chief Financial Officer is authorized to appropriate and expend an amount not to exceed \$9,100,000 (including up to \$8,996,800 in reimbursement costs and up to \$103,200 in accrued interest) in Deferred Fee Project DIF Payments from Fund 400122, Downtown DIF, subject to the City's receipt of these payments as they become available, for the purpose of funding the City's reimbursement obligation under the Reimbursement Agreement, contingent on certification by the Chief Financial Officer that funds necessary for expenditure are or will be on deposit with the City Treasurer.

Section 8. The Chief Financial Officer is authorized to add CIP No. RD23002, North Central Square Park, to the Capital Improvements Program.

Section 9. The Chief Financial Officer is authorized to increase the Capital Improvements Program Budget in CIP No. RD23002, North Central Square Park, and to appropriate and expend up to \$9,100,000 from Fund 400122, Downtown DIF, for the purpose of reimbursing Bosa for the design and construction of the park consistent with the terms of the Reimbursement Agreement, contingent on certification by the Chief Financial Officer that funds necessary for expenditure are or will be on deposit in the City Treasury.

Section 10. The Chief Financial Officer is authorized to increase the Capital Improvement Program Budget in CIP No. RD23002, North Central Square Park, and to appropriate and expend an amount up to \$10,000 from Fund 400122, Downtown DIF, to allow the City's payment of all transaction costs for acquisition of the park site, including escrow and title costs and the City's payment of independent consideration under Section 4 of the Purchase Agreement, contingent on certification by the Chief Financial Officer that funds necessary for expenditure are or will be on deposit with the City Treasurer.

Section 11. The Chief Financial Officer is authorized to increase the Capital Improvement Program Budget in CIP No. RD23002, North Central Square Park, and to appropriate and expend an amount up to \$100,000 from Fund 400122, Downtown DIF, to allow the City's payment of all staff costs accrued in acceptance and implementation of the Purchase Agreement and Reimbursement Agreement, contingent on certification by the Chief Financial Officer that funds necessary for expenditure are or will be on deposit with the City Treasurer.

Section 12. A full reading of this Ordinance is dispensed with prior to passage, a written copy having been made available to the Council and the public prior to the day of its passage.

Section 13. This Ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MARA W. ELLIOTT, City Attorney

By Kevin Reisch
Kevin Reisch
Senior Chief Deputy City Attorney

KJR:jdf
03/14/2023
Or. Dept: DREAM
Doc. No.: 3154813_2
Comp. to O-2023-128

I certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of APR 25 2023.

DIANA J.S. FUENTES
City Clerk

By Connie Patterson
Deputy City Clerk

Approved: 5/1/23
(date)

Todd Gloria
TODD GLORIA, Mayor

Vetoed: _____
(date)

TODD GLORIA, Mayor

Passed by the Council of The City of San Diego on APR 25 2023, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stephen Whitburn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery Steppe	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marni von Wilpert	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kent Lee	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Raul A. Campillo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sean Elo-Rivera	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage MAY 01 2023

AUTHENTICATED BY:

TODD GLORIA
Mayor of The City of San Diego, California.

(Seal)

DIANA J.S. FUENTES
City Clerk of The City of San Diego, California.

By Krystell Medina, Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on MAY 01 2023 APR 11 2023, and on _____.

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

DIANA J.S. FUENTES
City Clerk of The City of San Diego, California.

By Krystell Medina, Deputy
for Connie Patterson

Office of the City Clerk, San Diego, California
Ordinance Number O- 21640